

Background on Sec 257 – Sensitive law enforcement activities language in Escobar Amendment

BLUF –

1) The section language is in the image of 10 USC 275. While compatible with PCA, PCA is codified elsewhere, in 18 U.S. Code 1385.

2) Even under historical IA use, the model remains military support of law enforcement (whether federal or local as the situation requires). So ultimately, the amendment preserves the tradition of IA use in future occasions.

In Detail

AMENDMENT LANGUAGE

The language incorporated in the Escobar amendment is a modified version of 10 USC 275:

- This expresses a restriction on military personnel conducting sensitive activity like arrest of civilians
- Specifies application to Space Force which did not exist at the time of referenced statute
- **Note that the amendment does not edit existing statute in 10 USC 275. It reiterates the relevant portions in 10 USC Chapter 13 (Sec. 251-255) as a new section.**
- **The added section retains the ability of Congress to further specify exceptions to this restriction at their discretion.**

***Impact:** The amendment clarifies that Title X personnel may not conduct the specified sensitive law enforcement activities when operating under Insurrection Act (as defined in Title X, Chapter 13). It is a clarification of law consistent with historical practice.*

USE CASES

Regarding use cases, historically military personnel, even in Insurrection use, does *not* engage in sensitive law enforcement activities such as making actual arrests. By and large, the role is to manage crowds, secure areas already cleared by law enforcement, escort, and so on.

They may do temporary detention and turn over to a relevant law enforcement authority (federal or local as the case may require). This makes sense since the legal process is designed to proceed from LEA arrest.

An Army publication on support to civil auth discusses the historical cases at length [here](#). As the book describes, military personnel worked in conjunction with law enforcement and law enforcement did the arresting.

Vignette Examples from the historical text:

Joined by some twenty to twenty-five adults, those individuals set the effigy of a black on fire, but most then moved off in an orderly manner when guardsmen arrived to put out

the fire and disperse the crowd. One adult, Vernon Duncan, was turned over to the city police for failing to obey the order, and a girl who slapped a guardsman was turned over to school authorities. In all, there were only seventy absentees from school that day. All received notices of suspension. Duncan contested his arrest on the grounds that the president lacked authority to send troops to Arkansas, but in 1958 the Arkansas Supreme Court refused to rule on the matter, so the arrest stood. (p. 59)

At about that time, the troops apprehended a major troublemaker. Retired Maj. Gen. Edwin A. Walker had been spotted at a roadblock the night before and was thought to have “strongly influenced” the actions of the mob in the Oxford square, where he had also been present. Informing Washington and learning that the Department of Justice intended to seek a warrant for the general’s arrest, Katzenbach issued instructions for his detention. The next morning, when the mob at the city square dispersed and Walker attempted to flee, he was recognized and halted by a lieutenant, Robert Clark, the commander of Company B, 2d Battle Group, 9th Infantry. Escorted to the Lyceum about 1130, he was charged with seditious conspiracy and insurrection and placed under arrest. In the end, nothing came of the matter. When a federal grand jury later declined to indict the general, the government dropped the charges. (p. 118)

GEN Milley’s comments during HASC’s recent hearing on civil authorities reflected the desirability of an LEA-support based model including crowd control efforts, but not arrest by military personnel.

The amendment has no impact on any Title 32 of 502(f) uses of the Guard. Similarly, it has no impact on the ability to use federal law enforcement such as was seen in recent DC civil unrest response (BOP, ATF, DEA, FBI, etc.), Border Patrol who have been deputized in past instances, and the U.S. Marshall Service, who may be another appropriate arresting authority in the absence of willing local law enforcement authorities. *None of these groups is impacted by the amendment.*

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